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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/853,870	05/09/97	TOVEY	M 23164-1001

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BROWDY AND NEIMARK, P.L.L.C.  
624 NINTH STREET, NW  
SUITE 300  
WASHINGTON DC 20001-5303

EXAMINER

GOLDBERG, J

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

03/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
08/853,870

Applicant(s)  
Yovey

Examiner  
Jerome D. Goldberg

Group Art Unit  
1614



☒ Responsive to communication(s) filed on May 27, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 6, 13, and 22-38 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 32 if in independent form is/are allowed.

☒ Claim(s) 6, 13, 22-31, and 33-38 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 18

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "neoplastic disease" in claim 33 fails to find basis in claim 6. The terms in claim 6 is "neoplastic conditions".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 35-38 rejected under 35 U.S.C. 103(a) as being unpatentable over the Sato et al. patent of record.

The Sato et al patent teaches composition employing the claim  $20 \times 10^6$  IV of interferon. The patent does not teach the claimed <sup>lozenge</sup> ~~language~~ or buccol tablet. Applicant merely states that the lozenge or buccol tablet is not in the patent. Clearly a showing over the prior art form is needed. The remarks are insufficient without said showing.

Claims 6,13,22-31 and 33-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 and 10-16 of U.S. Patent No. 5,997,858. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because the instant case is drawn to greater than  $20 \times 10^6$  IU while the patent is drawn to  $20 \times 10^6$  IU.

Moreover, the composition would be employed in the prior patent methods.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEP. § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner J.D. Goldberg whose telephone number is (703) 308-4606. The examiner can normally be reached on Monday through Thursday from 9:00am to 3:00PM.

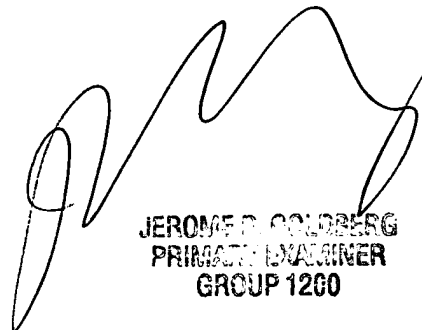
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Cintins, can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Goldberg/sg

February 17, 2000



JEROME D. GOLDBERG  
PRIMATE EXAMINER  
GROUP 1200